IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.
O R D E R

S.B. CIVIL WRIT PETITION NO.7491/2007.

Fatima and anr.
Vs.
Dakha Begum and ors.

Date of Order : 10/10/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri J.P. Goyal for the plaintiff-petitioners.
Shri Nawal Singh Sikarwar for the respondents.

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BY THE COURT:-

Heard learned counsel for the parties.

The petitioner has challenged the order dated 26/7/2007 by which the application filed by them under Order 7 Rule 14 CPC for producing on record the original pass book in evidence has been rejected. It has been submitted that photocopy of the said pass book has already been placed on record and the petitioners merely want to produce the original in add thereof.

Shri J.P. Goyal, learned counsel for the petitioners argued that earlier also, they had made a similar application though under the provisions of Order 13 Rule 2 read with Section 151 CPC but that

was also rejected by the trial court on the ground that provisions of Order 13 Rule 2 CPC has since been omitted.

Shri Nawal Singh Sikarwar, learned counsel for the respondents has opposed the writ petition and argued that petitioners have not correctly presented the fact because the trial court while rejecting the earlier application of the petitioners on 26/4/2007 had though stated that provisions of Order 13 Rule 2 CPC has been omitted by the Amendment Act of 2002 but, nevertheless, the application was examined on merits with reference to Order 7 Rule 14(3) CPC and has been rejected on merits. The application was rejected by the trial court on the ground that no reasonable and cogent plea has been assigned by the petitioners as to why such document could not be filed inadvertently. Learned counsel for the respondents further argued that another application on the same subject-matter would not be maintainable.

Learned counsel for the petitioners rejoined the issue and submitted that an application which was dismissed being not maintainable would not operate the bar of *res judicata* in view of the pronouncement

of the Apex Court in **Ganesh Prasad Badri Narayan Lahoti (D) by Lrs. Vs. Sanjeev Prasad Jamnaprasad Chourasiya and another : AIR 2004 SC 4156**.

On perusal of the aforesaid judgment, I find that in that case, the application filed under Order 22 Rule 11 CPC in which prayer was made for setting aside the judgment and permission to condone the delay and to take the legal representatives on record, was rejected being not maintainable. It was in that context that the Apex Court held that principle of *res judicata* could not be applied because the application was not rejected on merits but was rejected as not maintainable.

Perusal of the order dated 26/7/2007 indicates that the application was rejected on merits though the court also mentioned the fact about omission of provisions of Order 13 Rule 2 CPC because petitioners themselves have filed an application mentioning those provisions. In the impugned-order (Ann.3) also, the learned trial court has referred to the earlier order dated 26/4/2007 to the effect that similar application filed by the petitioners was rejected as also that photocopy of the pass book has

also been produced in evidence to that court.

On perusal of the impugned-order, I do not find that it suffers from an error apparent on the face of record so as to justify interference of this Court.

The writ petition being devoid of merit is therefore dismissed.

(MOHAMMAD RAFIQ), J.

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